

ALBERT L. FILLERUP

IBLA 81-237

Decided September 29, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring the Brokenback No. 1 through Brokenback No. 8 placer mining claims, W MC 176389 through W MC 176396 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The filing of the notice of location of a mining claim does not meet the requirement

for filing a notice of intention to hold the mining claim.

APPEARANCES: Fred R. Dollison, Esq., and Michael K. Shoumaker, Esq., Sheridan, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Albert L. Fillerup has appealed from the Wyoming State Office, Bureau of Land Management (BLM), decision dated November 28, 1980, which declared the Brokenback #1 through Brokenback #8 mining claims W MC 176389 through W MC 176396 abandoned and void for failure to file with BLM evidence of assessment work or notice of intention to hold the claims on or before October 22, 1979, as required by section 314(a) of the Federal Land Management and Policy Act of 1976 (FLPMA), 43 U.S.C. 1744(a) (1976), and the implementing regulation, 43 CFR 3833.2-1(a).

The claims were located in May and August of 1973 and timely recorded with BLM on October 19, 1979. Evidence of assessment work for the 1979 assessment year was filed with BLM on December 16, 1980.

On appeal appellant asserts that the 1979 public notice advising mining claimants that they were required to file their claims with BLM did not indicate that evidence of assessment work had to be filed also. Appellant states that his understanding of the notice and the regulations was that an affidavit of assessment was required to be filed the year after the claim was recorded with BLM. He further contends that the recordation documents filed with BLM on October 19, 1979, should constitute a notice of intention to hold the claims.

[1] Section 314(b) of the FLPMA, 43 U.S.C. 1744(b) (1976), and the corresponding regulation, 43 CFR 3833.1-2(a), requires the owner of an unpatented mining claim located prior to October 21, 1976, to record the claim with BLM within the 3-year period after that date. Appellant complied with this provision when he filed his location notice with BLM on October 19, 1979. The second requirement, however, which appellant failed to meet was the filing of evidence of assessment work or a notice of intention to the claims pursuant to 43 U.S.C. 1744(a). The corresponding regulation, 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

Clearly either an affidavit of assessment or notice of intention to hold was due to be filed on or before October 22, 1979, since that date was the date sooner after recordation than December 30 of the following

year. Failure to file timely the instrument required by the statute and regulations is deemed conclusively to constitute abandonment of the claims by the owner and they are void. See 314(c) FLPMA, 43 U.S.C. 1744(c) (1976); 43 CFR 3833.4(a). When appellant failed to file evidence of assessment by October 22, 1979, BLM properly declared appellant's claim void. Susan Mativo, 52 IBLA 134 (1981).

[2] Appellant's lack of understanding of the recordation requirements does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly adopted thereto. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); Robert E. Fennell, 56 IBLA 43 (1981); Don Sagmoen, 50 IBLA 84 (1980). Therefore, even though the BLM notice did not specifically mention the assessment work requirement, such a fact could not relieve the claimant of the obligation imposed by statute and regulation to file the assessment work on or before October 22, 1979. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[3] We find no merit in appellant's argument that the notice of location documents filed on October 19, 1979, constitute a notice of intention to hold. The requirements of a notice of intention to hold are set forth in 43 CFR 3833.2-3. That particular instrument follows a specific form and may be filed under certain circumstances. The notice of location documents filed pursuant to 43 CFR 3833.1-2 may not substitute for a notice of intention to hold. William N. Barbat, 56 IBLA 26 (1981); Don Sagmoen, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

